In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 734

CHARLES R. HARD, PETITIONER

v.

CIVIL AERONAUTICS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

The issue presented by this petition is the same as that in *Wilson* v. *Civil Aeronautics Board,* No. 434, this Term, in which this Court denied certiorari on November 12, 1957 (355 U. S. 870): namely, whether Section 609 of the Civil Aeronautics Act, which empowers the Civil Aeronautics Board to suspend a pilot "if the interest of the public so requires," authorizes the Board to suspend the certificate of an airline pilot found to have violated the Civil Air Regulations as a deterrent sanction against violation of those regulations. For the reasons set forth in the brief in opposition in *Wilson,* to which we respectfully refer the Court, it is submitted that the decision below, holding that the Board may suspend

as a deterrent sanction, is clearly correct, and that there is no occasion for review by this Court.

The only contention made by petitioner which was not made in *Wilson* is that the Board allegedly prejudged the matter because it previously had held, in an accident investigation conducted under Section 702 of the Act, that the accident which led to the suspension of petitioner's license had been his fault (Pet. 14–18). The short answer to this contention—a contention which, we note, was not made before the Board and therefore is not open to petitioner upon judicial review (see Section 1006 (e), Civil Aeronautics Act (49 U. S. C. 646 (e)); *Federal Power Commission* v. *Colorado Interstate Gas Co.*, 348 U. S. 492, 498–501)—is that the Board's decision in the accident investigation did not purport to determine whether petitioner's conduct constituted grounds for suspension, and therefore did not constitute prejudgment of the instant case. See *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 700–703; *United States* v. *Morgan*, 313 U. S. 409, 420–421.

Accordingly, it is respectfully submitted that the petition for certiorari should be denied.

J. Lee Rankin,
Solicitor General.

February 1958.